IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.259 OF 2006
IN
WRIT PETITION NO.2964 OF 2006

Pandurang Co-op.Sugar Factory Ltd. ...Petitioner
Versus
Shri.Kalyanrao Vasantrao Kale & Ors....Respondents

WITH

CONTEMPT PETITION NO.263 OF 2006
IN
WRIT PETITION NO.2965 OF 2006

Shri.Subhash Vitthal Phate ...Petitioner
Versus
Shri.Kalyanrao Vasantrao Kale & Ors....Respondents

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Mr.Salunke i/b Mr.P.B.Shah for Petitioners.

Mr.R.S.Ghadge for Respondent No.1.

Mr.D.A.Patil, A.G.P. for Respondent No.3.

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CORAM: A.M.KHANWILKAR, J.

MARCH 5, 2007.

P.C.

1. Both these Contempt Petitions will stand disposed of by this common order.

2. The grievance of the Petitioners is

regarding wilful disobedience of the order of this Court dated March 23, 2006 in Writ Petition No.1898 of 2006 read with order dated 2nd May 2006 in Writ Petition Nos.2964 of 2006 and Writ Petition No.2965 of 2006. The operative part of the order dated 2nd May 2006 reads thus:

> "3. In view of the above statement made by the respective advocate on either sides, the following order is passed.
>
> O R D E R
>
> (i) The Respondent state is hereby directed to dispose of the Appeal filed by the Petitioner within period of four weeks after giving an hearing opportunity to the respective parties.
>
> ii) The order passed by the Director of the Sugar (Administration) and Additional Registrar, Co-operative Societies Dated 21st January, 2006 which is impugned in the Appeal No.37 of 2006 pending be before the Minister for Co-operation shall be stayed till the final disposal of the Appeal and the said stay order shall continue further for a period of two weeks in case the Appeal is decided against the petitioners. Two weeks to be counted from the actual communication of the order to Petitioner by R.P.A.D.
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> iii) Petition disposed of in the above terms."

3. Insofar as direction in terms of clause

(i) is concerned, there is no dispute that the Appeal came to be disposed of by the Authority within time. The grievance is regarding wilful disobedience of the order of stay granted in terms of clause (ii) above. According to the Petitioners, the Respondents/Contemnors acted on the amended bye-law which fact is established from the averments in the pleadings in Suit No.522 of 2006. In the said proceedings, the persons who claimed to be recipients of the benefit of the amended bye-law asserted that they have been given benefit of membership by the Respondent No.1 Society. Relying on this assertion of the third party in some other proceedings, it is alleged that case of wilful disobedience of the order of this Court has been made out against the Respondents/Contemnors. It is also stated that the contemnors did not bother to controvert the assertion of the third parties in those proceedings.

4. Assuming that such assertion has been made by third party in some proceedings or for that matter, the Respondents/Contemnors have not filed

any reply controverting the assertion so made, I fail to understand how that would result in wilful disobedience of the order of the Court. In the first place, in the Contempt Petition as filed, no assertion is made as to when those persons have been admitted by the Respondent Society or given benefit of membership in terms of the amended bye-law, operation whereof has been stayed by this Court. No material facts have been given which would persuade this Court to take the view that in fact the Respondents/Contemnors by act of commission or omission has wilfully breached the order of the Court. The new grounds made out in the rejoinder affidavit before this Court cannot be the basis to proceed against the Contemnors. The Contemnors are expected to respond to the case made out in the Contempt Petition. The case made out in the Contempt Petition as found earlier, is not only vague but even if accepted as it is, cannot be the basis to proceed against the Respondents on the assumption that the Respondents/Contemnors in fact acted upon the amended bye-laws on or after the stay granted by this Court dated 23rd March 2006 and till it was in operation. Petitioners having

failed to make out or establish such a case, cannot succeed.

5. What is relevant to note for our purpose is that subsequently the Petitioners have withdrawn the Writ Petition filed before this Court being Writ Petition No.2964 of 2006 on 12th October 2006 and Writ Petition No.2965 of 2006 on 19th October 2006, thereby Petitioners have acquiesced of the order passed by the Appellate Authority which operates in favour of the Respondents/Contemnors. In this view of the matter also, I am not inclined to precipitate the matter any further.

6. Accordingly both these Petitions are dismissed. Notices issued to Respondents/Contemnors stand discharged.

A.M.KHANWILKAR, J.